

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 472 of 1997

in

SPECIAL CIVIL APPLICATION No 3368 of 1985

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MANSINH NARAYANSINH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 472 of 1997
MR VJ DESAI for Appellant No.
GOVERNMENT PLEADER for Respondent No. 1-2
-

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

Date of decision: 29/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

This appeal is listed on our running final hearing board dated 23.11.2004 at Sr.No.21. Endorsement made on the board shows that it is listed for the 42nd time. Today, when this matter was called out no one was present. In absence of the advocate for the petitioner, the matter has to be dismissed for default, but in the instant case, we find from the order dated 26.11.1995 passed by the learned Single Judge dismissing the main Special Civil Application No.3368/85 that he had exercised his jurisdiction under Art.227 and not under Art.226 of the Constitution of India. In that view of the matter, appeal before this court would not be maintainable in view of the judgment of Division Bench of this court in case of ISHQWARBHAI NAROTTAMBHAI PATEL v. K.H.TRIVEDI reported in 2003(3) GLR 1878.

Under the circumstances, we have thought it fit to dispose of this appeal on this ground of maintainability instead of dismissing it for default because it would be an exercise in futility as on an application filed by the appellant, normally the matters are restored on file and then decided on merits, including the ground of maintainability.

In view of the above, this appeal has to be dismissed only on the ground of its maintainability as in our considered opinion though the petition was labelled as petition under Art.226 of the Constitution, strictly speaking it was a petition under Art.227 of the Constitution and the learned Single Judge as such exercised his jurisdiction under Art.227 of the Constitution because the impugned judgment and order passed by the Gujarat Secondary Education Tribunal was challenged by the petitioner in the said petition.

In view of the above discussion, this appeal is dismissed. No order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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